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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,282	07/22/2003	Frederick G. Payne	54593-2	7900

23994 7590 09/07/2004

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EXAMINER

KATCHEVES, BASIL S

ART UNIT PAPER NUMBER

3635

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/625,282

Applicant(s)

PAYNE, FREDERICK G.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because figures 7 and 8 do not clearly show the invention as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,913,780 to Goergen.

Regarding claim 1, Goergen discloses a method of repelling birds by placing a repelling device (fig. 2: 30) in positions where birds roost (fig. 2: L). Goergen discloses a slick outer surface (fig. 1: 4) mounted at an angle that inhibits the standing of birds.

Regarding claim 2, Goergen discloses the device as being a polyhedron with a plurality of exposed surfaces (fig. 4: F, 30).

Regarding claim 3, Goergen discloses the device as having the shape of a prism (fig. 2: 30).

Regarding claim 4, Goergen discloses the device as having the shape of a pyramid (fig. 1: 3).

Regarding claim 8, Goergen discloses the device as being a sheet (fig. 4: 30) following a slope (fig. 1: 1, 2) of the structure over the roosting zone.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,913,780 to Goergen in view of U.S. Patent No. 5,291,707 to McDonald.

Regarding claim 5, Goergen does not disclose the bird deterrent as having the shape of an inverted "V". McDonald discloses a bird deterrent having an inverted "V" shape (fig. 3: 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goergen by adding an inverted "V" shape to the bird deterrent, as disclosed by McDonald, in order to better prevent the birds from coming in contact with the flat portions of the deterrent.

Regarding claim 7, Goergen does not disclose the bird deterrent as having a cone shape. McDonald discloses the use of a cone shape for deterring birds (fig. 2: 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goergen by adding a cone shape to the deterrent, as disclosed by McDonald, in order to better prevent the birds from contacting the potential roosting surface.

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,913,780 to Goergen in view of U.S. Patent No. 6,546,676 to Wiesener et al.

Regarding claim 6, Goergen discloses the device as meeting the roosting zone (fig. 2: see device 30 mounted to zone L) and the use of an adhesive (abstract). However, Goergen does not disclose the adhesive as being made of silicone. Wiesener discloses a bird repelling device secured to a structure through the use of a silicone adhesive (column 3, lines 14-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goergen by using silicone adhesive, as disclosed by Wiesener, in order to create a weather resistant seal.

Regarding claim 9, Goergen discloses the device as meeting the roosting zone (fig. 2: see device 30 mounted to zone L) and the use of an adhesive (abstract). However, Goergen does not disclose the adhesive as being made of silicone and applied along a periphery. Wiesener discloses a bird repelling device secured to a structure through the use of a silicone adhesive (column 3, lines 14-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goergen by using silicone adhesive, as disclosed by Wiesener, along the periphery of the device in order to create a weather resistant seal in order to prevent water from entering the underside of the device similar to the manner of which bath tubs, sinks, etc are caulked along their peripheries.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to bird deterrents in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK

  
Basil Katcheves

9/1/04

Examiner AU 3635